

Violations of the P&S Act

The following practices associated with custodial accounts are considered violations of the P&S Act:

- Custodial account shortages;
- Misusing custodial account funds;
- Failure to remit to livestock consignors when due;
- Failure to timely reimburse the custodial account for uncollected proceeds receivable; and
- Issuing insufficient funds checks or dishonored instruments to consignors.

Penalties for such violations can include cease and desist orders, suspensions of business operations, civil penalties up to a maximum of \$11,000 per violation, or permanent injunctions, fines, and jail sentences for actions taken through the Justice Department.

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Please direct comments or questions about this publication to:

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**Grain Inspection,
Packers and Stockyards
Administration**

Custodial Accounts

**United States
Department of Agriculture**

www.gipsa.usda.gov



What is a custodial account?

A custodial account is a trust account. The account benefits livestock consignors. All payments for livestock by buyers and other funds deposited into the custodial account are trust funds.

Who must establish and maintain custodial accounts?

Each market agency selling on commission (market) subject to the Packers and Stockyards Act, 1921, (the P&S Act) must establish and maintain a custodial account. The market acts as a fiduciary for livestock consignors. Fiduciaries have a legal responsibility to protect and preserve the funds entrusted to them for the true owners.

Markets must establish custodial accounts in banks whose accounts are insured by the Federal Deposit Insurance Corporation (FDIC). They must designate the accounts as “Custodial Account for Shippers’ Proceeds,” or some similar designation, to inform others that the market is acting as a fiduciary and that the funds in the account are trust funds (not owned by the market).

The market must maintain accounts and records disclosing how it is handling the custodial account; the names of all consignors having an interest in the account; and the amount due and payable to each consignor from funds in the custodial account. These records become particularly pivotal for consignors if the bank (where the market maintains the custodial account) fails. FDIC would use these records to determine who has rights, and in what amounts, to the insured proceeds in the custodial account. Trust beneficiaries are eligible for FDIC insurance of up to \$100,000 per person.

Deposits to the Custodial Account

Markets must deposit proceeds received from buyers in payment for livestock sold on consignment into the custodial account. Also, markets must reimburse the custodial account, in full, by the close of the 7th day after the sale for any uncollected proceeds receivable.

Withdrawals from the Custodial Account

Markets must draw checks from the custodial account to pay the net proceeds due to consignors or any person the market knows is legally entitled to payment; lawful charges from consignors’ invoices; and the charges due the market as compensation for its services. Lawful charges against a consignment include charges like trucking, brand and health inspection fees, meat board, etc., which have been deducted from the sale proceeds and were authorized by law or by the consignor. Markets are prohibited from using the custodial account to pay their own general expenses; make advances on livestock consigned or purchased; finance livestock buyers; or finance their own livestock purchases.

Investing Custodial Account Funds

Since custodial account funds are trust funds, held in trust by the market for the benefit of livestock consignors, there are limited opportunities for markets to invest those funds. An investment that moves trust funds out of a custodial account subjects those funds to risk. Without the protection of trust account status, creditors can attach those funds to the detriment of the livestock consignor and rightful owner of the funds.

A market may invest custodial account

funds in interest-bearing savings accounts or one or more certificates of deposit (CDs), as long as the market’s ability to meet its obligations to its consignors is not impaired. Investments must be properly identified as being part of the custodial account and maintained in or issued by the same bank as the custodial account. CDs must be made payable to the market as trustee of the custodial funds.

Custodial Account Reconciliation

Each market must know whether the custodial account it maintains is in proper balance. To make that determination, a market should reconcile the custodial account at least once a month, and it must retain the reconciliation and all supporting schedules or documents as part of the market’s records. As part of its regulatory activities, Grain Inspection, Packers and Stockyards Administration (GIPSA) requires markets to submit a special custodial account report at least once annually, showing the condition of the custodial account on a specific date. GIPSA reviews the reports, and takes further regulatory action as warranted by what is revealed in these reports.

If the reconciliation of a custodial account reveals a shortage, the market must take immediate action to correct the shortage. Typical corrective actions include transferring funds from the general account or other sources into the custodial account, or drawing on a line of credit to deposit an amount equal to the shortage into the custodial account.

If the custodial account reconciliation reveals an overage, the market may leave the excess in the account, move the excess to an allowable custodial account investment, or transfer the excess funds to its general account.